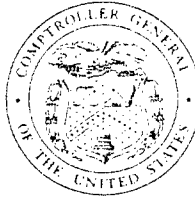


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EN/ON

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202165

DATE: May 27, 1981

MATTER OF: General Atomic Company

DIGEST:

1. Offeror is responsible for delivery of proposal to proper place at proper time; any exception to general rule requiring rejection of late proposals is permitted only in exact circumstances provided by solicitation.
2. Proposal delivered by commercial carrier--even if timely received in main freight receiving area--usually must be rejected if it arrives at office designated in solicitation after exact time specified. While procurement regulations provide that, in certain circumstances, mailed bids or proposals may be considered even though they arrive late at designated office, regulations include no exception for late handcarried bids or proposals.
3. When there is no evidence that commercial carrier attempted to deliver proposal to office designated in solicitation for handcarried proposals, but instead went directly to agency's main receiving area in accord with directions on sign near freight loading dock, Government action is not paramount reason for late receipt of proposal. In such circumstances, proposal may not be evaluated.
4. Offeror who uses commercial carrier, rather than mail, cannot invoke exception to procurement regulations permitting acceptance of late proposals in case of mishandling by Government.

[Protest of Bid Rejection for Lateness]

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General Atomic Company protests the refusal of the Department of Energy (DOE) to evaluate a proposal delivered by commercial carrier to DOE's main receiving area nearly six hours before the deadline for submission of initial proposals, but not received on time by the office designated in the solicitation as the one to which proposals should be handcarried.

General Atomic asserts that the carrier was following specific instructions from DOE which required all deliveries to be made to the receiving area; the firm also alleges that DOE personnel subsequently mishandled the proposal in forwarding it to the designated office. General Atomic therefore believes its proposal should be considered or, alternatively, that the entire procurement should be canceled and begun again.

The proposal in question was submitted in response to a solicitation (No. DE-RP01-81-NE32084) for "Exploratory Development of Improved Thermonuclear Materials for Space Nuclear Power Systems." Closing date and time were January 16, 1981, at 4:30 p.m. The solicitation contained the standard clauses indicating that proposals received in the designated office after that time would not be considered unless (1) they had been sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers, (2) they had been sent by mail and it was determined by the Government that their lateness was due solely to mishandling by the Government after receipt, or (3) only one proposal was received. The solicitation also stated that proposals should be mailed to DOE's Office of Procurement Operations, Post Office Box 2500, Washington, D.C. or handcarried to Room 1J-073 at DOE headquarters in the Forrestal Building, Washington, D.C.

General Atomic's proposal was shipped from California via Federal Express and delivered to Room GF-117 of the Forrestal Building at 10:45 a.m. on January 16, according to the carrier's record, signed by a DOE employee. However, it was not received in the office designated in the solicitation, i.e., Room 1J-073, until 4:54 p.m. that day.

General Atomic has submitted a photograph of a sign in the loading dock area of the Forrestal Building which reads:

"ALL DELIVERIES FOR DEPARTMENT OF ENERGY GO TO GF-117 RECEIVING UNIT." The agency, however, states that this sign applies only to freight, and that Federal Express itself has instructed its carriers to make all deliveries to Room GF-117, presumably to save time. DOE concludes that since the carrier ignored a label on the proposal indicating that it should be handcarried to Room 1J-073, Federal Express, as General Atomic's agent, is responsible for its late delivery.

The general rule is that a bidder or offeror is responsible for delivery of its bid or proposal to the proper place at the proper time; any exception to the rule requiring rejection of late bids or proposals is permitted only in the exact circumstances provided by the solicitation. Southern Oregon Aggregate, Inc., B-190159, December 16, 1977, 77-2 CPD 477 and cases cited therein. Moreover, whether a bid or proposal is late is measured by its time of arrival at the office designated in the solicitation, not by its time of arrival at an agency's central mailroom. LectroMagnetics, Inc., 56 Comp. Gen. 50 (1976), 76-2 CPD 371.

Thus, a handcarried bid or proposal--even if timely received in a central receiving area or mailroom--usually must be rejected if it arrives at the office designated in the solicitation after the exact time specified. Daymar, Inc., B-188701, August 8, 1977, 77-2 CPD 88; Defense Products Company, B-185889, April 7, 1976, 76-1 CPD 233. The rationale for this rule is that while the Federal Procurement Regulations (FPR) provide that in certain circumstances mailed bids or proposals may be considered even though they arrive late at the designated office, the regulations include no exception for late handcarried bids or proposals. FPR § 1-2.303; 1-3.802-1 (1964 ed.).

On the theory that a literal application of the regulations would, in some cases, contravene their intent and spirit, our Office, in a very narrow exception to the general rule, has allowed late handcarried bids or proposals to be accepted if they were delivered on time to the wrong place and if it can be shown that some action by the Government was the paramount cause for their late delivery to the proper place. Southern Oregon Aggregate, Inc., supra.

In such cases, it also must be shown that there has been no compromise to the integrity of the competitive system. For example, in Scot, Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425, we held that the Army might properly consider a bid which Federal Express had attempted to deliver to the designated office at Redstone Arsenal, Alabama, but was prevented from doing so by Government personnel following internal security regulations. We stated that the regulations in question did not mandate delivery to the central receiving area, and would have permitted the carrier to deliver the bid to the proper addressee after first reporting there; we also found that from the time of receipt there had been no opportunity for tampering by the bidder. The case was distinguished from earlier ones in which commercial carriers apparently had delivered bids to the wrong offices on their own initiative; in Scot, they were misdirected by Government personnel.

In the instant case, the question is whether Federal Express acted independently or at DOE's direction in delivering General Atomic's proposal to the main receiving area. DOE states that it has never issued instructions to carriers to use the main receiving area for the delivery of bids or proposals, and private couriers other than Federal Express are delivering proposals to room 1J-073. General Atomic, however, argues that the sign near the loading dock either supersedes or conflicts with the request for proposals, and causes confusion as to the proper place for delivery.

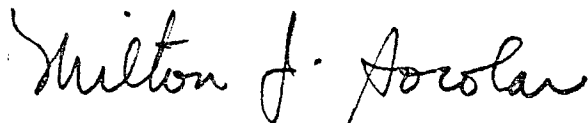
We find no evidence that Federal Express attempted to deliver the proposal to the designated office, 1J-073. It appears that the carrier went to the truck dock and then directly to DOE's main receiving area, where the proposal was routinely accepted. The carrier's record, which General Atomic has submitted to us as verification of the delivery in question, indicates that General Atomic's proposal was only one of 28 items delivered by Federal Express to the same DOE employee at the same time. While the other 27 items may properly have been delivered to the main receiving area because they were freight shipments, there is nothing to suggest that the carrier could not have delivered the proposal to the specified addressee. Rather, it appears to us that the delivery to one location was considerably more convenient for the carrier.

We believe the solicitation was clear: mailed proposals were to be addressed to a Washington, D.C. post office box (where they were held for pickup by representatives of the Office of Procurement Operations) and handcarried proposals were to go to room 1J-073 of the Forrestal Building. By delivering the proposal to a different room, Federal Express, as DOE points out, placed it in the agency's internal distribution system and subjected it to normal procedures for forwarding of items within that system.

General Atomic further alleges that its proposal was mishandled once it was delivered, since it was not logged in or stamped with the time and date, either in DOE's main receiving area or in the Forrestal Building mailroom, where it apparently made an intermediate stop before being forwarded to the office designated in the solicitation. In this regard, we note that all the cases cited by General Atomic in support of its argument that there was mishandling by the Government during this six-hour interval deal with either late mailed bids or late telegraphic modifications of mailed bids, and were decided under the regulatory exception for mishandling of such bids.

General Atomic argues that there should be no distinction between the treatment of late mailed bids or proposals and late handcarried bids or proposals, if they have been mishandled after receipt and if there has been no opportunity for tampering. However, as noted above, the procurement regulations are silent on the subject of handcarried bids--which includes those sent by commercial carrier. Having chosen to use commercial carrier, rather than mail, General Atomic cannot now invoke the mishandling exception permitted by these regulations. Southern Oregon Aggregate, Inc., supra.

The protest is denied.



Acting Comptroller General
of the United States